

## § 1309.18

eligibility to receive financial assistance from TVA. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a written request for a hearing, specifying why it believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f)(3) of this section shall remain in effect.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

## § 1309.18 Under what circumstances must recipients take remedial or affirmative action?

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which TVA may require to overcome the effects of the discrimination, if another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation recipient's program or activity on the basis of age.

(c) If a recipient operating a program or activity which serves the elderly or children, in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program or activity.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

## 18 CFR Ch. XIII (4-1-07 Edition)

## § 1309.19 When may a complainant file a civil action?

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and TVA has made no finding with regard to the complaint; or

(2) TVA issues any finding in favor of the recipient.

(b) If either of the conditions set forth in paragraph (a) of this section is satisfied, TVA shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under Section 305(e) of the Act, to bring a civil action for injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days' notice by registered mail to the Secretary, the Attorney General of the United States, TVA, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

## PART 1310—ADMINISTRATIVE COST RECOVERY

Sec.

1310.1 Purpose.

1310.2 Application.

1310.3 Assessment of administrative charge.

AUTHORITY: 16 U.S.C. 831-831dd; 31 U.S.C. 9701.